SUPREME COURT, U.S.
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No. 05-

IN THE

Supreme Court of the United States

HAMILTON COUNTY DEPARTMENT OF EDUCATION,
Petitioner,

v.

MAUREEN DEAL; PHILLIP DEAL,
Parents on Behalf of ZACHARY DEAL,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1491o, which requires participating States to "ensure that all children with disabilities have available to them a free appropriate public education," *id.* § 1400(d)(1)(A), is satisfied when a school board provides disabled children with "*some* educational benefit" that is non-de minimis, as this Court indicated in *Board of Education* v. *Rowley*, 458 U.S. 176, 200 (1982) (emphasis added), or whether school boards must satisfy a heightened and inherently subjective standard by providing a "*meaningful* educational benefit."

2. Whether local educational authorities can use their educational expertise to prepare Individualized Education Program ("IEP") proposals in advance of IEP meetings or must instead bow to the unilateral dictates of parents regarding a child's IEP.

PARTIES TO THE PROCEEDING

All the parties in this case are identified in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Hamilton County Department of Education, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-42a) is reported at 392 F.3d 840 (6th Cir. 2004). Its decision denying the petition for rehearing *en banc*, (Pet. App. 115a), is unreported.

The August 20, 2001 opinion and order (Pet. App. 63a-114a) of the Tennessee State Department of Education administrative law judge is unreported. The March 4, 2003 opinion and order (Pet. App. 43a-62a) of the United States District Court for the Eastern District of Tennessee is reported at 259 F. Supp. 2d 687 (E.D. Tenn. 2003).

JURISDICTION

The court of appeals denied a timely petition for rehearing on April 1, 2005. Pet. App. 115a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 20 U.S.C. § 1401(9), which provides that:

> The term "free appropriate public education" means special education and related services that—
>
> (A) have been provided at public expense, under public supervision and direction, and without charge;
>
> (B) meet the standards of the State educational agency;
>
> (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

STATEMENT OF THE CASE

This case raises fundamentally important questions that directly affect the ability of local school boards and States to use their educational expertise to determine how best to marshal and allocate scarce resources to educate disabled children.

In *Board of Education* v. *Rowley*, 458 U.S. 176 (1982), this Court held that the Education of Handicapped Act (later renamed the Individuals with Disabilities Education Act ("IDEA" or the "Act")), requires participating States to provide meaningful access to an education "sufficient to confer *some educational benefit* upon the handicapped child." *Id.* at 200 (emphasis added). The Court declined, however, "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act." *Id.* at 202. In the ensuing two decades, the indeterminate nature of this approach has led to confusion and a deep division in the lower courts. Specifically, the circuits have split on whether educational programs must provide *some* non-de minimis educational benefit, or must instead satisfy a heightened and inherently subjective *meaningful* educational benefit standard. The time has come for the Court to provide further guidance on the meaning of "some educational benefit" and this case is the perfect vehicle for that undertaking.

In the decision below, the Sixth Circuit joined the minority of courts which have held that, to satisfy the IDEA's requirement of "a free appropriate public education," 20 U.S.C. § 1400(d)(1)(A), it is not enough for States to provide an educational program that "is reasonably calculated to [provide a] more than *de minimis* educational benefit." Pet. App. 33a. Instead, the lower court held, States must provide

disabled children with a "'*meaningful* educational benefit.'" *Id.* at 34a. On the basis of this heightened standard, the Sixth Circuit rejected as inadequate an individualized education program for an autistic child that was based on a scientifically acceptable teaching methodology and consisted of 35 hours per week of special education, including physical and speech therapy. The lower court remanded the case for a determination whether, under its "meaningful educational benefit" test, petitioner is obligated to pay for the particular—and decidedly more costly—in-home therapy technique favored by the child's parents.

Petitioner's proposed educational plan would undoubtedly have passed muster under the standard employed by the majority of circuits, which require only that schools provide *some* non-de minimis educational benefit. That standard, which appropriately defers to the educational expertise of local school officials, ensures that federal courts do not entangle themselves in complex and difficult assessments of how best to educate children with a host of varying disabilities. It also ensures that federal courts will not, inadvertently or otherwise, dictate local educational policy, by mandating expensive potential-maximizing programs that inevitably force local schools to forgo other, competing educational priorities.

Indeed, the decision below exacerbates this very danger. The Sixth Circuit held that petitioner's consideration of the cost implications of providing the particular therapy that respondents advocated gave rise to a procedural violation of the IDEA. According to the lower court, such considerations constituted impermissible predetermination. This ruling, too, conflicts with the view of the majority of circuits.[1]

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[1] This Court recently recognized the importance of determining, when a child's IEP is challenged, whether parents or school boards bear the burden of proof, by granting certiorari in *Schaffer* v. *Weast*, 377 F.3d 449

The legal and fiscal ramifications of this case are enormous. In 2003, school systems around the country served nearly 7 million children under the IDEA. The "meaningful benefit" and predetermination standards the lower court employed authorize federal court micromanagement of fundamentally local educational policy. This Court should grant the petition to clarify the legal standards applicable to these important cases.

A. The IDEA.

Congress enacted the IDEA pursuant to its power under the Spending Clause. See 20 U.S.C. § 1412(a). Accordingly, Congress uses federal monies to induce States to provide disabled children with "a free appropriate public education." *Id.*; see also *id.* §§ 1401(9), 1412(a)(1). To this end, local school systems are required, with parents' participation, to develop and implement an individualized education program ("IEP") for each disabled child. *Id.* § 1401(14); see also 34 C.F.R. §§ 300.340-.350. IEPs determine educational placement for disabled children and must be revised annually. 20 U.S.C. § 1414(d). IEP disputes are subject to administrative and judicial review. *Id.* § 1415.

B. The *Rowley* Opinion.

In *Rowley*, this Court answered two questions regarding the precursor to the IDEA. First, "[w]hat is meant by the Act's requirement of a 'free appropriate public education'?" 458 U.S. at 186. Second, "what is the role of state and federal courts in exercising the review granted by 20 U.S.C. § 1415?" *Id.*

To answer the first question, this Court sought to discern the meaning of the Act's "cryptic" definition of a "free appropriate public education," or "FAPE," *id.* at 187-89, and held that a State provides a FAPE by "providing personalized

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(4th Cir. 2004), *cert. granted*, 125 S. Ct. 1300 (2005) (No. 04-698). The Sixth Circuit's predetermination ruling raises related questions.

instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Id.* at 203. The Court made clear, however, that provision of a FAPE does not require States to "maximize the potential of handicapped children." *Id.* at 189. Indeed, the Court explained "[w]hatever Congress meant by an 'appropriate' education, it is clear that it did not mean a potential-maximizing education." *Id.* at 197 n.21. "Noticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children." *Id.* at 189. To discern such a substantive standard, the Court turned to the Act's legislative history. *Id.* at 190-92.

That history led the Court to draw a sharp distinction between educational *access* and educational *benefit*. The Court explained that Congress intended to help disabled children by extending access to special education, even though it understood such special education could not be substantively guaranteed to produce any particular outcome:

> By passing the Act, Congress sought primarily to make public education *available* to handicapped children. But in seeking to provide such *access* to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such *access* meaningful. Indeed, Congress expressly "recognize[d] that in many instances the process of providing special education and related services to handicapped children is *not guaranteed to produce any particular outcome*." Thus, the intent of the Act was more to *open the door* of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.

Id. at 192 (alteration in original) (emphases added) (citation omitted). The Court attributed the focus on "access"—as opposed to "any particular substantive level of education"—to Congress's reliance on two "landmark" district court cases.

Id. at 192-93 (citing *Pennsylvania Ass'n for Retarded Children* v. *Commonwealth*, 334 F. Supp. 1257 (E.D. Pa. 1971); *Mills* v. *Board of Educ.*, 348 F. Supp. 866 (D.D.C. 1972)). The Court explained that both cases focused on "*access* to an adequate, publicly supported education," but "[n]either case purport[ed] to require any particular substantive level of education." *Id.* at 193.

Accordingly, Congress intended to afford "meaningful" access to public education, *id.* at 192, but required only that "the education to which access is provided be sufficient to confer *some educational benefit* upon the handicapped child." *Id.* at 200 (emphasis added). Thus, while the Act requires States to provide *meaningful access* to education, it only requires "*some* educational benefit." *Id.* (emphasis added).

In answer to the second, procedural question, this Court held the Act's "provision that a reviewing court base its decision on the 'preponderance of the evidence' is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Id.* at 206. Indeed, "courts must be careful to avoid imposing their view of preferable educational methods upon the States." *Id.* at 207. The "primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child." *Id.* Congress sought to limit federal judicial scrutiny, because the Act's "require[ment] that the reviewing court 'receive the records of the [state] administrative proceedings' carries with it the implied requirement that *due weight* shall be given to these proceedings." *Id.* at 206 (second alteration in original) (emphasis added). In short, "courts lack the 'specialized knowledge and experience' necessary to resolve 'persistent and difficult questions of educational policy.'" *Id.* at 208